



November 10, 2015

**Faxed to: 916/227-6282**

Department of Transportation  
Division of Engineering Services  
Office Engineer, MS43  
1727 30<sup>th</sup> Street  
P.O. Box 168041  
Sacramento, CA 95816-8041

Attn: John McMillan, Deputy Division Chief

RE: 04-2G8504 – For Construction on State Highway in Alameda County Near Livermore 2.0 Miles East of  
North Flynn Road At Stone Cut Underpass

Subj: Bid Protest

Please accept this letter as an official protest of the bid submitted by RGW Construction, Inc. (RGW) for the above-referenced Contract. The bid submitted by RGW is non-responsive and must be rejected because it failed to comply with the mandatory requirements of the Subcontractor Listing Law and Caltrans's mandatory requirements for Subcontractor Listing.

Granite Construction Company ("Granite") timely submitted a bid to the California Department of Transportation (the "Department") for the above-referenced Contract. Currently, RGW is the apparent low bidder and Granite is the second low bidder. As explained more fully below, RGW's bid is nonresponsive because it failed to comply with the Department's mandatory requirements for subcontractor listing and impermissibly failed to identify the scope of subcontracted work for bid items 32 – Remove Concrete Paving and Base, 33 – Remove Base and Surfacing, and 36 – Roadway Excavation. RGW listed the percentages subcontracted for these items as 5%, 23% and 5% respectively. (Please see attached copy of RGW's electronic submission evidencing its non compliance) No further information was given as is required when a subcontractor is listed as performing work on an item which is less than 100% of the item.

**RGW failed to Comply with the Subcontractor Listing Law**

The Subletting and Subcontracting Fair Practices Act, California Public Contract Code 4100 et seq. (Subcontractor Listing Law) requires bidders for public contracts to list the name, the location of place of business, and the California contractor license number of each subcontractor who will perform work in an amount in excess of one-half of one percent of the prime contractor's total bid or \$10,000, whichever is greater. Cal. Pub. Contract Code, § 4104(a). The bidder must also set forth the portion of the work that will be done by each subcontractor. Cal. Pub. Contract Code, § 4104(b). The purpose of the Subcontractor Listing Law is to prevent the practices of bid shopping and bid peddling that take place after award of the contract. Pub. Cont. Code §4101. The California legislature has determined that such practices often result in poor quality of material and workmanship to the detriment of the public. To help eradicate the practices, the statute requires prime contractors to list their intended subcontractors for designated portions of the work, and also prohibits the use of any other subcontractor for the designated work without first meeting certain legal requirements and obtaining the consent of the awarding authority. Cal. Pub. Contract. Code §4107. Further, the Department's Subcontractor List form instructs bidders to submit the following

information with the bid: (a) the name, (b) the location of the place of business, (c) the California contractor license number, and (d) the portion of work of each subcontractor who is required to be listed under the Subcontractor Listing Law. Additionally, the Department's Subcontractor List form requires the bidders to list the bid item numbers with percentages of the portion of work subcontracted. Any item to be subcontracted less than 100% requires the description of the portion of work that is subcontracted.

RGW listed Austin Enterprises (Austin) of Bakersfield as the subcontractor performing work on certain items but failed to describe the extent of their scope after listing only a percentage to be subcontracted to Austin. Instead, RGW only provided the percentage of work for each item: 32 – Remove Concrete Paving and Base -5%, 33 – Remove Base and Surfacing -23%, and 36 – Roadway Excavation -5%. Clearly this fails to meet the requirements identified in both the Subcontractor Listing Law and the Department's own Subcontractor List form instructions. Therefore, RGW's bid should be rejected as non-responsive.

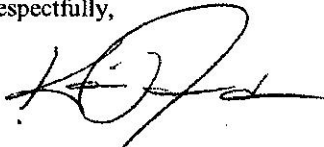
#### **The Defects In RGW's Bid Were Material**

A bid containing a material deviation must be rejected as non-responsive. A deviation in a bid is material if the variation would give the low bidder an unfair advantage over other bidders. Here, RGW's violations of the Subcontractor Listing Law and Caltrans' bid specifications created an advantage for RGW not available to other bidders. The defects in its bid violated minimum State mandates and afforded RGW with the opportunity to bid shop a significant element the Project and potentially obtain lower pricing to perform the work after bid opening.

Because Granite provided the low, responsive and responsible bid, it should be awarded the Contract. Granite is fully prepared to perform this job in its customary dependable and high quality manner.

Thank you for your time and consideration of this matter. Please do not hesitate to contact me at (408) 327-7010 if you require additional information.

Respectfully,



**Karim Massoud**  
Chief Estimator  
CA Group - Coastal Region  
715 Comstock Ave  
Santa Clara, CA 95054  
Direct 408-327-7010 Cell 925-518-0776  
Fax 408-327-7090  
[karim.massoud@gcinc.com](mailto:karim.massoud@gcinc.com)  
[www.graniteconstruction.com](http://www.graniteconstruction.com)

# **GRANITE™**



Encls.

CALTRANS  
STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
BID FOR

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CONSTRUCTION ON STATE HIGHWAY IN  
ALAMEDA COUNTY NEAR LIVERMORE 2.0 MILES EAST OF NORTH FLYNN ROAD AT STONE  
CUT UNDERPASS  
In District 04 on Route 580

UNDER

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Notice to Bidders and Special Provisions dated September 28, 2015  
Project plans approved June 1, 2015  
Standard Specifications dated 2010  
Standard Plans dated 2010

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Identified by

Contract No. 04-2G8504

04-Ala-580-R4.0

Project ID 0412000008

FEDERAL-AID PROJECT  
ACNHP-5801-1(066)E

Bids open Wednesday, November 4, 2015

Dated September 28, 2015

AADD

## STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 04-2G8504 Project ID: 0412000008

Bidder Name: RGW Construction, Inc.

Bidder ID: VC0000015712

DES-OE-0102.2C (REV 03/2015)

Bidding Firm: RGW Construction, Inc.

List this sub? Yes

## 13) Business Name CNJ Enterprises

Location City Scottsdale State AZ

California Contractor License Number 967058

Public Works Contractor Registration Number 1000004881

Portion of Work Subcontracted:

Item #	Description
64 26	field painting

List this sub? Yes

## 14) Business Name Harris Rebar No. CA.

Location City Livermore State CA

California Contractor License Number 695035

Public Works Contractor Registration Number 1000002339

Portion of Work Subcontracted:

Item #	Description
60 33	rebar only
62 100	
86 31	rebar only.

List this sub? Yes

## 15) Business Name Austin Enterprises

Location City Bakersfield State CA

California Contractor License Number 764893

Public Works Contractor Registration Number 1000001896

Portion of Work Subcontracted:

Item #	Description
32 5	?
33 23	?
36 5	?

Less than 100% of items  
subcontracted. Description  
of subcontracted scope  
required

**GRANITE™****FAX**

715 Comstock Street  
Santa Clara, CA 95054  
Phone: 408-327-7000  
Fax: 408-327-7099  
BID FAX 408-317-7090

To: John McMillan From: Karim MASSOUD /dd  
Company: CALTRANS Date: 11/11/15  
Fax: 916-227-6282 Total Pages (including cover page): 5  
Phone: \_\_\_\_\_ Sender's Reference Number: \_\_\_\_\_  
RE: \_\_\_\_\_ Your Reference Number: \_\_\_\_\_

☒ Urgent☒ For Review☐ Please Comment☒ Confirm Receipt

Notes and Comments:

Please see attached protest letter  
for Project 04-298504